

*City of Las Vegas*

**AGENDA MEMO**

**PLANNING COMMISSION MEETING DATE: JULY 9, 2009**

**DEPARTMENT: PLANNING AND DEVELOPMENT**

**ITEM DESCRIPTION: ABEYANCE - VAR-34539 - APPLICANT/OWNER: BASHIR AFZALI**

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**\*\* CONDITIONS \*\***

**STAFF RECOMMENDATION: DENIAL.** If Approved, subject to:

**Planning and Development**

1. Approval of and conformance to the Conditions of Approval for Site Development Plan Review (SDR-34540) shall be required, if approved.
2. This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

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**July 9, 2009 - Planning Commission Meeting**

**\*\* STAFF REPORT \*\***

**PROJECT DESCRIPTION**

Note: This request was originally noticed as Variance (VAR-33771), but, due to material changes in the project, was renoticed for the 06/11/09 and subsequent Planning Commission meetings as Variance (VAR-34539).

The subject site is currently an undeveloped lot located approximately 500 feet north of Washington Avenue. The proposed commercial development would have approximately 6,650 square feet of retail space available, requiring 38 parking spaces to meet the Title 19.04 standards, but only 35 parking spaces, including two handicap accessible spaces, will be provided. Staff is recommending denial of this request as the applicant has not provided compelling evidence of a unique or extraordinary circumstance, and has created a self-imposed hardship by proposing to overbuild the site. Alternative design or a reduction in the scope of the project would bring the development into compliance with Title 19 standards.

**BACKGROUND INFORMATION**

<b><i>Related Relevant City Actions by P&amp;D, Fire, Bldg., etc.</i></b>	
12/01/04	The City Council approved a request for Rezoning (ZON-5222) from R-E (Residence Estates) to C-1 (Limited Commercial) on 0.58 acres located between 1000-1100 Martin L. King Boulevard. The Planning Commission recommended approval. The Resolution of Intent expired on 12/01/06.
12/01/04	The City Council denied requests for a Site Development Plan Review (SDR-5223) with a Waiver of perimeter buffering and landscaping standards and a Special Use Permit (SUP-5225) for a proposed Smog Check and Car Wash, Self Service on 0.58 acres located between 1000-1100 Martin L. King Boulevard. The Planning Commission recommended approval.

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<p>04/23/09 05/14/09</p>	<p>The Planning Commission, at the request of the applicant, abeyed requests for a Rezoning (ZON-33765) from R-E (Residence Estates) to C-1 (Limited Commercial); a Variance (VAR-33768) to allow a 20-foot rear yard setback where Residential Adjacency standards require 35 feet; a Variance (VAR-33771) to allow 32 parking spaces and zero loading spaces where 36 parking spaces and one loading space are required; and a Site Development Plan Review (SDR-33767) for a proposed 6,232 square-foot commercial building with Waivers of the perimeter landscape buffer standards to allow buffers of 10 feet where 15 feet is required along the west perimeter and five feet where eight feet is required along the north and south perimeters and a Waiver of the building placement and orientation standards on 0.58 acres on the east side of Martin L. King Boulevard, approximately 500 feet north of Washington Avenue. Due to material changes in the project, these items were renotified as Rezoning (ZON-33765), Variance (VAR-34538), Variance (VAR-34539), and Site Development Plan Review (SDR-34540), respectively, for the 06/11/09 Planning Commission meeting.</p>
<p>06/11/09</p>	<p>The Planning Commission, at the request of the applicant, abeyed requests for Rezoning (ZON-33765) from R-E (Residence Estates) to C-1 (Limited Commercial); Variance (VAR-34538) to allow a 15-foot front yard setback where 20 feet is required, a 73-foot setback where residential adjacency requires 84 feet, and to allow a trash enclosure to be located 10 feet from a residentially zoned property where residential adjacency requires 50 feet; Variance (VAR-34539) to allow 34 parking spaces where 42 parking spaces are required; and Site Development Plan Review (SDR-34540) for a proposed two-story, 7,180 square-foot commercial building with Waivers of the Perimeter Landscape Buffer Standards to allow buffer of five feet where eight feet is required along the north and south perimeters and seven feet where eight feet is required along the east perimeter on 0.58 acres on the east side of Martin L. King Boulevard, approximately 500 feet north of Washington Avenue.</p>
<p>06/25/09</p>	<p>The Planning Commission, at the request of the applicant, abeyed requests for Rezoning (ZON-33765) from R-E (Residence Estates) to C-1 (Limited Commercial); Variance (VAR-34539) to allow 34 parking spaces where 42 parking spaces are required; and Site Development Plan Review (SDR-34540) for a proposed two-story, 7,180 square-foot commercial building with Waivers of the Perimeter Landscape Buffer Standards to allow buffer of five feet where eight feet is required along the north and south perimeters and seven feet where eight feet is required along the east perimeter on 0.58 acres on the east side of Martin L. King Boulevard, approximately 500 feet north of Washington Avenue. The applicant requested that Variance (VAR-34538) to allow a 15-foot front yard setback where 20 feet is required, a 73-foot setback where residential adjacency requires 84 feet, and to allow a trash enclosure to be located 10 feet from a residentially zoned property where residential adjacency requires 50 feet be withdrawn without prejudice.</p>

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***Related Building Permits/Business Licenses***

There are no related building permits or business licenses associated with the subject site.

***Pre-Application Meeting***

12/16/08	<p>A pre-application meeting was held to discuss the submittal requirements for a Rezoning and Site Development Plan Review and Variances:</p> <ul style="list-style-type: none"> <li>• Required setbacks, Residential Adjacency issues and parking requirements.</li> <li>• Perimeter landscape buffer Waivers required.</li> <li>• Parking lot landscaping Exceptions required.</li> <li>• Preference for a single driveway, with required throat depth.</li> </ul>
12/16/08	<p>A pre-application meeting was held to discuss the submittal requirements for a Rezoning and Site Development Plan Review, as well as required Variances for setbacks and parking requirements.</p>

***Neighborhood Meeting***

A neighborhood meeting was neither required nor held for this request.

***Field Check***

03/19/09	<p>A field check was conducted by staff. The subject site is an undeveloped parcel. There is an unpermitted chain link fence along the front of the lot, as well as some debris.</p>
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***Details of Application Request***

***Site Area***

Gross Acres	0.58 Acres
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<b>Surrounding Property</b>	<b>Existing Land Use</b>	<b>Planned Land Use</b>	<b>Existing Zoning</b>
Subject Property	Undeveloped	C (Commercial)	R-E (Residence Estates) [Proposed: C-1 Limited Commercial]
North	Shopping Center	C (Commercial)	C-1 (Limited Commercial)
South	Retail Shops	C (Commercial)	C-1 (Limited Commercial)
East	Single-Family Residence	C (Commercial)	R-E (Residence Estates)
West	Single-Family Residences	R (Rural Density Residential)	R-E (Residence Estates)

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<i><b>Special Districts/Zones</b></i>	<i><b>Yes</b></i>	<i><b>No</b></i>	<i><b>Compliance</b></i>
<b>Special Area Plan</b>			
West Las Vegas Plan	X		Y
<i><b>Special Districts/Zones</b></i>	<i><b>Yes</b></i>	<i><b>No</b></i>	<i><b>Compliance</b></i>
<b>Special Purpose and Overlay Districts</b>			
A-O Airport Overlay District (140 Feet)	X		Y
<b>Trails</b>		X	N/A
<b>Rural Preservation Overlay District</b>	X		Y
<b>Development Impact Notification Assessment</b>		X	N/A
<b>Project of Regional Significance</b>		X	N/A

## DEVELOPMENT STANDARDS

*Pursuant to Title 19.10, the following parking standards apply:*

Parking Requirement							
Use	Gross Floor Area or Number of Units	Required			Provided		Compliance
		Parking Ratio	Parking		Parking		
			Regular	Handi-capped	Regular	Handi-capped	
General Retail Store, Other Than Listed	6,650 SF	1:175	36	2	33	2	
TOTAL			38		35		N
Loading Spaces	One loading space is required, up to 10,000 SF		1		1		Y
Percent Deviation					8%		

## ANALYSIS

The applicant is proposing a 6,650 square-foot commercial building, which requires a total of 38 parking spaces, including two handicap accessible spaces, as well as one on-site loading zone. The submitted site plan depicts a total of 35 parking spaces, including two handicap accessible spaces, and one loading zone. The 8% reduction in required parking indicates that the site, as proposed, would be overbuilt. Furthermore, the proposed deficiency is preferential in nature and as such, the applicant has created a self-imposed hardship that staff cannot support; therefore, staff is recommending denial of this request.

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**FINDINGS**

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.18.070L states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by proposing to overbuild the subject site. Alternative site design or a reduction in the floor area of the development would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

**NEIGHBORHOOD ASSOCIATIONS NOTIFIED** 21

**ASSEMBLY DISTRICT** 6

**SENATE DISTRICT** 4

**NOTICES MAILED** 161

**APPROVALS** 2

**PROTESTS** 1